

**PERSONAL COMMUNICATIONS SYSTEM  
SITE LICENSE AGREEMENT**

ENTERED INTO BY AND BETWEEN:

The Village of Westmont, an Illinois municipal corporation,

And

Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation

\_\_\_\_\_, 2019~~20~~

For Property located at:

328 South Wilmette Avenue  
Westmont, DuPage County, Illinois

THIS LICENSE AGREEMENT ("Agreement") is entered into between the Village of Westmont ("Village"), an Illinois municipal corporation, and Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation ("Licensee") and is dated this \_\_\_\_ day of \_\_\_\_\_, 2020~~19~~<sup>19</sup> ("Effective Date").

WHEREAS, the Village is a municipal corporation organized and existing under the laws of the State of Illinois; and

WHEREAS, the 1970 Illinois Constitution provides that units of local government may contract and otherwise associate with individual associations and corporations in any manner not prohibited by law or ordinance (1970 ILL. CONST., Art. VII, Sec. 10); and

WHEREAS, the Village has found that it is in the public interest to accept consideration from Licensee and permit Licensee, for the purposes described herein, to occupy and use a portion of the real estate described below benefiting and occupied by the Village; and

WHEREAS, the Village finds that it is in the best interests of their citizens and the health, safety, and welfare of the community to enter into this Agreement; and

WHEREAS, Westmont owns the real estate commonly known as 428 South Wilmette Avenue, Westmont, IL legally described as set forth in Exhibit "A" attached hereto, and depicted in Exhibit "B" attached hereto (the "Property"); and

WHEREAS, the Village owns and operates upon the Property (a) an elevated water storage facility ("Elevated Tank") forming part of the Village's public water supply system provided pursuant to the applicable provisions of the Illinois Municipal Code and (b) a Village Police Department communications antenna (both collectively referred to herein as "Village Operations"); and

WHEREAS, the Village agrees to permit and the Licensee intends to install, operate and maintain a wireless communications service system including a certain wireless Antenna Facility (as hereafter defined) on the top of the Elevated Tank and such related equipment on ground space near the Elevated Tank - - all pursuant to and in accordance with the terms of this Agreement; and

WHEREAS, the Village desires to license Licensee and Licensee desires to occupy a portion of the certain space on the Elevated Tank for the installation of certain antennas and ground space for the installation of Licensee's equipment as depicted on Exhibit "C" (such space being hereinafter referred to as the "Premises") and, further, the Village desires to grant and the Licensee desires to accept a license for its Permitted Use (as hereafter defined) of the Premises for the construction, operation and maintenance of an Antenna Facility (as hereafter defined), including space for cable, conduit and sleeves; *provided*, however, that the construction, operation and maintenance of the Antenna Facility do not interfere with the Village Operations pursuant to the terms of this Agreement; and

WHEREAS, Licensee agrees to compensate the Village with the annual payments and promises herein set forth.

NOW, THEREFORE, in consideration of the promises and payments herein set forth and other good and valuable consideration, the sufficiency and validity of which are hereby mutually acknowledged, the parties agree:

## **1 RECITALS AND EXHIBITS INCORPORATED**

The above recitals and the exhibits referred to in this Agreement are incorporated herein by reference as if set forth fully herein. To the extent the terms of this Agreement are more specific than the recitals or vary from the recitals, the terms of this Agreement shall control.

## **2 DEFINITIONS**

2.01 Antenna Facility. The communications equipment and antennas, including all personal property, equipment, improvements, ground equipment and ground shed and other related facilities as described and depicted pursuant to approved Plans and Specifications, as may be amended from time to time with the written approval of the Village subject to the terms herein, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.02 Plans and Specifications. The plans, drawings, specifications titled "Site Plan and Engineering" initialed and dated by the Village and Licensee, are attached hereto as Exhibit "C." The Plans and Specifications are preliminary to the Final Specs, as hereinafter defined, which shall be substantially identical to the Plans and Specifications.

2.03 Premises. That portion of ground space and the Elevated Tank licensed to Licensee for the Antenna Facility as set forth in Exhibit "C."

2.04 Licensee. "Licensee" shall mean Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation, and, for purposes of the license granted herein includes -all of its agents, independent contractors, assigns, affiliated entities, directors, employees, officers, representatives, and successors in interest.

2.05 License Fee. The sums set forth in Section 3.03.01.

## **3 LICENSE**

3.01 Term. The Village hereby grants (and Licensee hereby accepts) a license of the Premises, for the Permitted Use and uses set forth hereafter, to Licensee for a "Term" of five (5) years, with a "Commencement Date" of the earlier of either (a) the date that Licensee begins construction of the Antenna Facility or (b) August 1, 2020, unless Licensee notifies the Village in writing prior to the Commencement Date that it is terminating this Agreement. At midnight on the last day of the month in which the fifth, tenth, fifteenth, and twentieth anniversaries of the Commencement Date occurs, the Agreement shall automatically extend for additional, distinct and successive "Additional Terms" of five (5) years each; provided however that Licensee may give the Village

written Notice not less than sixty (60) days prior to the end of the Term or any Additional Term in order to terminate this Agreement on the last day of the Term or any applicable Additional Term. The "Total Term" shall not exceed twenty-five (25) years. It is expressly understood and agreed that all rights granted to Licensee under this Agreement are irrevocable until this Agreement expires or sooner terminates as herein provided.

The obligations of Licensee under this Agreement are expressly subject to and conditioned upon the satisfaction (or waiver in writing by Licensee) of the following conditions: receipt by Licensee of (a) all third party certificates, licenses, approvals, and permits, and (b) any other federal, state or local governmental authorizations (all of the foregoing, collectively, the "Permits") necessary for the use of the Premises by Licensee as an antenna site for the Permitted Use. In the event that (a) any of such applications should be finally rejected or any Permit issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority, (b) any structural analysis, soil boring, radio frequency propagation, or similar tests are found to be unsatisfactory so that Licensee, in its sole discretion, will be unable to use the Premises for the Permitted Use, or (c) any condition of the Premises renders it impossible or impractical for Licensee's purposes (as determined in Licensee's sole discretion), then Licensee shall have the right to terminate this Agreement effective immediately upon Village's receipt of written notice of such termination from Licensee or upon any later date specified by Licensee in the written notice. Further, Licensee may terminate this License at any time for any or no cause whatsoever by giving at least six (6) months' advance written notice to Village. All License Fees earned to said termination date shall be retained by Village. Any License Fees paid to Village, yet not earned to said termination date, shall immediately be reimbursed to Licensee. Notwithstanding the preceding sentence requiring the reimbursement to Licensee for unearned License Fees, upon such termination, this License shall be of no further force and effect and the Parties shall have no further obligations, including the payment of money, to each other.

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**3.02 Plans and Specifications.** Upon execution of this Agreement, Licensee shall immediately commence preparation of all plans, specifications, and drawings ("Final Specs") necessary for issuance of a building permit for the construction of the Antenna Facility. Licensee shall (a) diligently pursue and use its best efforts to prepare Final Specs and (b) submit an application for building permit on or before the expiration of one hundred eighty (180) days after Village Board approval of this Agreement. The Village shall promptly review the Final Specs and issue a building permit, if appropriate, or advise Licensee of any modifications, changes, or corrections, necessary for permit issuance. The parties shall reasonably cooperate regarding permit issuance.

**3.03 Payments.** All payments shall be non-refundable.

**3.03.01 *Payments to Village: License Fee.*** Licensee shall pay the Village an annual License Fee in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) for each year of the Term of this Agreement within thirty (30) days following the Commencement Date. Thereafter, the annual License Fee shall increase by five percent (5%) for each Additional Term.

Licensee shall pay the Village the License Fee annually for each Additional Term on or before the Commencement Date of each Additional Term. The License Fee for the Term and any Additional Terms is set forth below

Initial Term: \$\_\_\_\_\_ per year

First Additional Term: \$\_\_\_\_\_ per year

Second Additional Term: \$\_\_\_\_\_ per year

Third Additional Term: \$\_\_\_\_\_ per year

Fourth Additional Term: \$\_\_\_\_\_ per year

All of Licensee's monetary obligations set forth in this Agreement are conditioned upon Licensee's receipt of an accurate and executed W-9 Form from Licensor. In the event that this Agreement is terminated for any reason prior to the conclusion of any 12-month period for which Licensee prepaid the License Fee, Village shall promptly refund such prorated portion of the prepaid License Fee which is directly proportionate to the portion of said 12-month period for which the Agreement is no longer in effect. Upon request from Licensee, Village shall provide Licensee with a completed Licensee Supplier Authorization Form, and any other documents reasonably requested by Licensee for regulatory or tax compliance purposes and (b) invoices at such intervals as Licensee requests and including a purchase order number. Both Parties acknowledge and agree that Licensee will be responsible for all payments required hereunder (except to the extent that any abatements or offsets are provided for under this [License Agreement](#) or applicable law), but that Licensee will be unable to process payments until the above described payment documentation has been received by Licensee. Accordingly, the due dates of any payments provided for in this License may be tolled in the event that Village has not provided such payment documentation to Licensee. Village acknowledges and agrees that Licensee requires a lag time to establish Village as a vendor in its payment administration system. Accordingly, notwithstanding any License Fee due dates set forth herein, in the first year of the Initial Term, Licensee's initial License Fee payment(s) may not actually be made until the date which is ninety (90) days following the Commencement Date.

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3.03.02 *No Reduction in Payments.* No payment made by Licensee to any third party shall reduce the sums due and payable to the Village under Section 3.03.01.

3.03.03 *Payment of Expenses.* Licensee shall pay the Village a one-time additional amount of \$3,000.00 for Licensee's portion of the Village's reasonable expenses related to the legal and engineering aspects of this Agreement within thirty (30) days following the Commencement Date of this Agreement. This payment does not reduce those set forth in Section 3.03.01. This payment of this amount is a precondition to the issuance of building permits by the Village to Licensee under this Agreement.

3.03.04 *Delivery of Payments and Late Payments.* The sums set forth in Section 3.03.01 shall be payable to the Village at the address set forth in Section 16. Except as provided in Section 3.03.01, Licensee shall be in default upon failure to pay such sums within ten (10) days after written notice from the Village, and Licensee shall pay the Village a late charge of five percent (5%), compounded monthly, of the overdue sum.

Upon the agreement of the Parties, Lessee may pay the License Fees by electronic funds transfer and in such event, Lessor agrees to provide Lessee bank routing information and complete the necessary electronic transfer of funds form for such purpose upon request of Licensee.

3.04 Not a Lease. This Agreement is not a lease and it does not create a tenancy of any type.

#### 4 CONSTRUCTION, OPERATION AND MAINTENANCE

4.01 Construction and Installation. Village has approved ~~and agrees to in concept only~~ the Plans and Specifications set forth in Exhibit ~~C & D~~. Upon full execution of this Agreement and upon securing all necessary approvals, permits, and licenses from any and all federal, state and local agencies having jurisdiction over the Antenna Facility, Property, and Premises, Licensee has the right to construct, maintain, install, repair secure, replace, remove and operate on the Premises the Antenna Facility, including but not limited to radio communications facilities, utility lines, transmission lines, an air conditioned equipment shelter(s) and/or an air conditioned equipment room in, adjacent to, or on the roof of, the Building, electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore. In connection therewith, Licensee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Licensee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers; provided, however, that such construction, installation, operation, maintenance, repair, replacement, or removal is done in accordance with this Agreement, the Plans and Specifications, the Final Specs including any amendments approved by the Village, and all applicable federal, state and local laws, statutes, regulations and ordinances.

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4.02 Deviation from Plans and Specifications. Licensee shall not at any time, whether as part of initial installation or construction or as part of any repair or replacement, vary from the Plans and Specifications, or Final Specs specifically including the design, size and configuration of the antennas as shown on the Plans and Specifications and the Final Specs, without the review and express approval of the Village Board, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Licensee may make additions, alterations or improvements to Licensee's equipment housed within any building or screened enclosure on the Premises without such Village approval; and, provided further, that Licensee may replace any or all of its antennas or equipment installed on or about the Elevated Tank with replacement equipment or antennas of a substantially similar kind, which is reinstalled in substantially the same place and position, and is of substantially the same size and weight as the replaced equipment or antennas without the need for Village approval. The Village Manager, in his

reasonable discretion, shall determine whether any activity is within a screened area of the Premises and whether replacement is substantially similar in the areas noted herein this Section 4.02. If the Village Manager finds the activity is not within a screened area or the replacement is not of a substantially similar kind, review and approval of the Village Board is required before any activities occur.

4.03 Appearance. All antennas shall be painted to match the color of the Elevated Tank and if at any time during the Term of this Agreement, including any and all Additional Terms, the Elevated Tank is repainted, then Licensee shall repaint the antennas to match the color of the repainted Elevated Tank. All wiring and antennas on or around the Elevated Tank shall be white in color.

4.04 No Conversion to Fixture. No part of the Antenna Facility shall become a fixture. The Antenna Facility and any equipment installed on the Premises shall remain the personal property of Licensee.

4.05 Limitation of Licensee's Right. Licensee has only those rights expressly provided for herein this Agreement. Licensee shall not mortgage, encumber, hypothecate or pledge as collateral, or permit to be mortgaged, encumbered, hypothecated or pledged as collateral, any real or personal property of the Village, and Licensee shall indemnify and hold the Village harmless from the same, including any reasonable attorneys' fees and expenses. In the event any Mechanic's Liens or similar encumbrances are recorded against the Property as a consequence of any work performed by Licensee, Licensee shall promptly cause the same to be removed or post with the Village a cash bond, for the benefit of the Village, in that order of priority, equal to One Hundred Fifty Percent (150%) of the amount of the lien or encumbrance. Licensee shall have the right to contest the validity, nature or amount of any such lien, but upon the final determination of such questions, shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at its own expense. Notwithstanding the above, Licensee shall have the right to pledge its own personal property as collateral and may have appropriate UCC financing statements and fixture filings filed or recorded as necessary to perfect such security interests.

4.06 Waiver of Licensors' Lien. Village hereby waives any and all lien rights it may have, statutory or otherwise concerning the Antenna Facility or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Village gives Licensee and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Licensee's and/or Mortgagee's sole discretion and without Village's consent.

4.07 Maintenance, Safety, and Workmanship. The Antenna Facility shall be constructed, installed, operated, maintained, repaired, replaced or removed by Licensee in a good, safe and workmanlike manner consistent with good engineering practices and all applicable laws and regulations. Licensee shall maintain the Antenna Facility in good repair, and in a clean and slightly condition.

4.08 Failure to Maintain Safety, Workmanship, and Sightliness. In the event Licensee fails to maintain, repair, replace, or remove the Antenna Facility or any portion thereof in accordance with this Agreement, the Village may do so at the sole expense of the Licensee; provided that, prior to making any such maintenance, repairs, replacement, or removal, the Village shall provide Licensee fifteen (15) days advance written notice in order to permit Licensee to comply with this Section 4.08 or to present the Village with a plan for compliance acceptable to the Village Manager. This notice requirement shall not apply in the event of an emergency. Pursuant to this Section 4.08 herein, any and all costs, fees, and expenses for the construction, installation, operation, maintenance, repair, replacement, or removal of the Antenna Facility shall be the sole and exclusive responsibility of Licensee, whether work was performed by Licensee and its agents or the Village and the Village's agents.

4.09 Restoration and Removal. Immediately upon completion of the construction of the Antenna Facility, Licensee shall restore any areas of the Premises or the Property damaged or disturbed by its construction to its condition immediately preceding access by the Licensee to the Premises. Within ninety (90) days following termination of this Agreement, Licensee shall restore the Premises, the Elevated Tank, and the Property which was impacted in any way (casualty, reasonable wear and tear excepted therefrom) by the Antenna Facility or any use of the Premises, and the Elevated Tank for purposes related to the Antenna Facility, all as provided for in other paragraphs of this Agreement. Within ninety (90) days following termination of this Agreement, or its earlier termination or cancellation for any reason, Licensee shall, at its sole expense, remove from the Premises its Antenna Facility, and Licensee shall repair any damage to and fully restore the Premises, the Elevated Tank, and the Property resulting from any installation, maintenance, repair, operation, use and/or removal of the Antenna Facilities, casualty and ordinary wear and tear occurring even in the absence of the Antenna Facility excepted. Any other items of Licensee's property that shall remain on the Property after the expiration or following an earlier termination date, may, at the option of the Village, be deemed to have been abandoned, and in such case, such items may be retained by the Village as its property or be disposed of by the Village, without accountability to the Village, in such a manner as the Village in its sole and absolute discretion shall determine. Removal, restoration and disposal shall be at Licensee's expense regardless of who performs the work.

## **5 PERMITTED USE**

5.01 Use Generally. Licensee shall use the Premises for any lawful activity in connection with the provision of installing, maintaining, and operating a communications facility and uses incidental thereto, including, without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities ("Permitted Use"). Such Permitted Use includes any additional blanket easements and rights as are necessary to Licensee's use of the ~~Tower~~Antenna Facilities (e.g. to make physical connections between Licensee's antennas and Licensee's ground facilities located on the Premises, the installation of metering rack and similar).

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5.02 Compliance with Laws. Such use shall be in full compliance with this Agreement and with all applicable federal, state and local laws, regulations, ordinances and licenses, including without limitation building, life/safety, disability, wage and hour, and labor laws and regulations



and any regulations and licenses of the Federal Communications Commission (“FCC”) or any successor agency.

5.03 Non-Interference. Licensee shall not, except as permitted by this Agreement, use the Premises in any way which interferes with Village Operations, including but not limited to the Village's principal use of the Elevated Tank as a water storage facility and as an antenna and communications site for the Westmont Police Department. To the extent Licensee fails to comply with this Section 5.03 after notice of default and an opportunity to cure as set forth in this Agreement, the Licensee shall immediately suspend Antenna Facility operations.

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5.04 Village Management of the Premises. At all times, the Village shall, in its sole and absolute discretion, have the right to operate, maintain, paint, repair, and replace (“Village Work”) any of its existing facilities, including the Elevated Tank and police communications equipment. Licensee shall cooperate with the Village to allow the Village Work to occur. Whenever necessary to accommodate the Village Work, Licensee shall have the right to install a temporary antenna on Property without further approval of the Village Board. Any expense, loss, or inconvenience sustained by Licensee as a consequence of the Village Work shall be the sole and exclusive responsibility of Licensee, except to the extent caused by the negligent or intentional acts or omissions of the Village, or any of their respective employees or agents. Except in the event of any emergency repairs, prior to the commencement of any work by the Village which is in the immediate vicinity of Licensee's antenna installation, or which may require the cooperation and presence of Licensee's personnel, the Village shall give Licensee written notice no later than ninety (90) days prior to the commencement of Village Work. Notwithstanding anything contained herein to the contrary, in no event shall Village Work be performed more than once every five (5) years during the Term of this Agreement. As of the Effective Date Village has no planned Village Work in 2020.

Comment [JZ1]: I am waiting for confirmation from Village staff as to this statement.

5.05 New Uses. The Village shall not permit new uses of the Premises, except as may occur under Paragraph 8 below, that in any manner cause interference with Licensee's operations or Interference as defined in Section 6. The Village agrees to notify Licensee of any intended installation on the Premises in order for Licensee, at Licensee's expense, to assist the Village in determining whether such use will (a) cause any interference with the transmission or receipt of radio signals to Licensee's antenna or (b) unreasonably impair Licensee's ability to construct, operate, maintain, replace, or remove the Antenna Facility.

## **6 BROADCAST INTERFERENCE**

6.01 Interference. As used in this Agreement, “Interference” with a broadcasting activity means:

6.01.01 Interference within the meaning of the provisions of the recommended practices of the Electronics Industries Association (EIA) and the rules and regulations of the Federal Communications Commission (FCC) then in effect; or

6.01.02 A material impairment of the quality of either sound or picture signals on a broadcasting activity as may be defined by the FCC at any hour during the period of

operation or activity, as compared with that which would be obtained if no other broadcaster were broadcasting from the Premises or had any equipment on the Premises.

6.02 Representation and Warranty. In the event there is interference with the existing police department communications equipment, or such equipment as it may be repaired, upgraded, or replaced during the Term or any Additional Term, Licensee shall eliminate such interference. Upon Licensee's failure to do so within thirty (30) days after Licensee has actual notice of the interference and, if there is no actual notice, within thirty (30) days after the Village notifies tenant of such interference, Licensee shall immediately suspend Antenna Facility operations and in the event such interference cannot be reasonably abated Licensee shall have the right to terminate this Agreement..

6.03 Interference Forbidden.

6.03.01 Licensee shall operate the Antenna Facilities in a manner that will not cause physical, mechanical, radio frequency or signal interference to Village and other licensees of the Property, provided that such other licensees' installation predates the installation of the Antenna Facility and provided that this prior installation may be reasonably expanded, repaired, maintained, upgraded and replaced pursuant to those agreements which predate this Agreement. All operations by Licensee shall be in compliance with all Federal Communication Commission ("FCC") requirements.

6.03.02 Subject to Section 5.05 and Section 8, the Village may enter into any new license, lease, or agreement to allow another person or entity to use any portion of the Premises.

6.03.03 Subsequent to the installation of the Antenna Facility, Licensor will not, and will not permit its other licensees to install new equipment on or make any alterations to the Property or property contiguous thereto owned or controlled by Licensor, if such modifications cause interference with Licensee's operations. In the event interference occurs, Licensor agrees to use best efforts to eliminate such interference in a reasonable time period. Licensor's failure to comply with this paragraph shall be a material breach of this Agreement.

6.04 Remedy in the Event of Interference. In the event any signal interference in violation of this Section 6 is caused by the Licensee, the Village, or any third party, and said interference is not eliminated within thirty (30) days of the giving of written notice to the person or entity responsible for the interference, Licensee, and Village, Licensee may (a) take such reasonable steps as are necessary to remedy the signal interference at the expense of the person or entity responsible for the signal interference or (b) notify the Village and require the Village to notify and compel the remedying of the signal interference by the responsible party to the extent the Village may lawfully do so. If, within forty-five (45) days, the interference with the Licensee's signal is not remedied under either of the aforementioned options, then Licensee may terminate this Agreement.

## **7 CASUALTY OR CONDEMNATION**

7.01 Termination. In the event of any damage, or destruction to the Premises which renders the Premises unusable or inoperable for Licensee's Permitted Use, Licensee shall have the right, but not the obligation, to terminate this Agreement and all of its duties and obligations herein. No later than thirty (30) days prior to the date of termination, Licensee shall provide written notice of the termination to the Village, *provided* that termination shall not occur unless by virtue of such casualty, (a) the Premises are no longer adequate for Licensee to continue its operation within sixty (60) days of said casualty event or (b) substantial repairs to the Premises cannot reasonably be completed within sixty (60) days from the date of the damage.

7.02 Repairs in Lieu of Termination. If Licensee does not terminate this Agreement, within sixty (60) days from the date of such damage or destruction and related solely to the event causing damage or destruction, the Village shall substantially complete repairs to the Premises necessary to permit Licensee's use of the Premises for the Antenna Facility, but only to the extent that the Village has received insurance proceeds with respect to damage or destruction to the Premises. The Village's obligation to make repairs to the Premises shall be limited to the amount of said insurance proceeds if any and in the event that such proceeds are not adequate to make all necessary repairs, the Village may elect to forego repair of the Premises or choose to repair the Premises with other funds. If Licensee chooses not to terminate this Agreement pursuant to Section 7.01, the License Fee shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises, retroactive to the date of such damage or destruction.

7.03 Condemnation. In the event of condemnation, if Licensee determines in its sole discretion that, as a result of said condemnation, Licensee is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Licensee's operations at the Premises for more than forty-five (45) days,, Licensee may terminate this Agreement as of the date title to the Property vests in the condemning authority or Licensee is required to cease its operations, whichever is earlier. Licensee shall be entitled to share in the proceeds of any condemnation award, and Licensee's share shall be limited to the value of the Antenna Facility which is transferred to the condemning authority, and for relocation and moving expense. If Licensee does not terminate this Agreement, the License Fee shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

## **8 RELOCATION OF LICENSEE FACILITIES**

8.01 Village's Reservation. The Village reserves and retains the right to raze or replace the Elevated Tank at the same or a new location on the Property. In the event the Village chooses to raze or replace the Elevated Tank, the Village may, at any time during the Term or any Additional Term require Licensee to change the location of the Antenna Facilities on Exhibit "C" to a substantially similar area on the Property (the "New Location") provided that the New Location is oriented in the same direction, is at the same height as the original location, and meets all of the Plans and Specifications and is acceptable to Licensee, and also provided that Licensee's use at the Premises is not interrupted or diminished during said relocation. In the event that the New Location is not reasonably acceptable to Licensee, (in Licensee's sole and

absolute discretion), for the operation of its Antenna Facilities, Licensee shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Village. Notwithstanding anything contained to the contrary herein, in no event shall Licensee be required to relocate the Antenna Facilities more than once in any ten (10) year time period during the Term of this Agreement.

8.02 Notice. The Village shall give Licensee no less than twelve (12) months prior written notice of the Village's exercise of its relocation right under this section. Village represents to Licensee, that as of the Effective Date, the Village has no current plan to raze or replace the Elevated Tank.

**Comment [JZ2]:** I am waiting for a response from Village staff as to this statement.

8.03 Cooperation and Reimbursement. Subject to Licensee's right to terminate in Section 8.01, Licensee shall cooperate with the Village, in all reasonable respects, so as to facilitate Licensee's relocation to the New Location. The Village shall reimburse Licensee for any expense incurred to relocate Licensee's Antenna Facility, including but not limited to, the cost of obtaining and maintaining any necessary governmental approvals, permits or authorization from the Village and running structural reports.

8.04 Effect of Relocation. The relocation of the Antenna Facilities to the New Location shall not cause the amounts payable under this Agreement to be abated or increased. Upon the relocation of the Antenna Facilities, all references in this Agreement to the Premises shall be deemed to be references to the New Location.

## 9 SITE ACCESS

9.01 Utilities. [[[JOHN/WESTMONT: This section open: My understanding is that the Village will have Nicor access a breaker in an existing elec panel for elec power (?). In such case, assume would elec would not be separately metered and thus Village would be supplying elec (?)]The Village shall permit access across the Premises for all necessary utilities. Access for utilities shall be had only in the locations depicted in Exhibit "C". All utilities shall be installed underground in locations approved by the Village. Licensee shall pay for and hold the Village harmless for the cost of utilities used for the operation of the Antenna Facility at rates charged by the servicing utility.

**Comment [JZ3]:** I am waiting for a response from Village staff as to this statement.

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9.02 Access to Premises Generally. Licensee shall have the right to ingress and egress across the Premises from the Wilmette Avenue entrance to the Premises as depicted in Exhibit "B". Licensee shall be permitted to park a vehicle within the Premises for temporary servicing and maintenance only. Licensee shall be permitted access across, upon and under the Premises at all reasonable times for purposes of constructing, installing, operating, maintaining, repairing, replacing or removing ("Licensee's Work") the Antenna Facility, provided however that Licensee shall have free access to the Premises and Antenna Facility twenty-four (24) hours a day, seven (7) days a week for operating and maintenance purposes. Whenever Licensee or its agents, employees, or contractors, desire(s) to access the Premises, Licensees shall first notify the Village of Westmont Police Department at the regular non-emergency telephone number (630/ 981-6300). The notification shall include the number of persons, the purpose of being present on Site, the approximate number of hours Licensee will be present, and the names of the

individuals or the name of the contractor. All persons accessing the site on behalf of Licensee shall have proper identification.

9.03 The Village expressly acknowledges and agrees that Licensee provides its services at all times, even in times of power failure, natural disaster, civil commotion, and other emergencies. Accordingly, Village expressly acknowledges and agrees that it will do nothing to interfere with Licensee's access to the Premises in order to maintain, operate and repair the Antenna Facility. In the event Village fails to comply with this paragraph, Licensee may terminate this Agreement and/or pursue any other remedies available under this Agreement at law and/or at equity.

## 10 INSURANCE

10.01 Licensee's Obligation. **[[[OPEN: NICOR RISK]]]** Licensee shall procure and maintain or cause to be procured and maintained, with respect to the Antenna Facility and all of Licensee's Work to be performed on the Premises, whether by Licensee or its contractors, agents or employees, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of Licensee's Work by Licensee, its contractors, agents, representatives, employees or subcontractors.

**Comment [JZ4]:** What is the concern with these insurance requirements? I don't understand the comment "Nicor Risk."

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### 10.02 Insurance Requirements.

10.02.01 *Scope and Limits.* Licensee's insurance shall provide the following minimum scope of insurance and minimum insurance limits.

1. Workers compensation insurance as required by the Labor Code of the State of Illinois.
2. Employer's liability insurance of \$1,000,000 each accident/disease/policy limit.
3. Builder's risk insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the Project, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement.
4. Fire and casualty insurance for the Antenna Facility in an amount not less than one hundred percent (100%) of the replacement cost of the Antenna Facility.
5. Commercial Automobile Liability insurance covering all owned, non-owned and hired vehicles in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage.
6. Commercial General Liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage and \$1,000,000 general aggregate (including

but not limited to, personal injury, blanket contractual liability, products and completed operations, and explosion, collapse and damage to underground property).

10.02.02 *Endorsements.* Licensee's insurance shall also contain the following;

1. The Village will be included as an additional insured as their interests may appear on the commercial general liability and automobile liability as respects all work performed under this Agreement;
2. The insurance procured pursuant to the provisions of this paragraph shall be primary and non-contributory with any insurance program of self-insurance that may be maintained by the Village;
3. Any insurance or self-insurance maintained by the Village shall be excess of the insurance procured by or on behalf of Licensee and shall not contribute to or with such Licensee's insurance;
4. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Village, and each of their officials, agents, employees and volunteers; and each policy required by this paragraph shall be endorsed to state that thirty (30) days' prior written notice by regular mail or personal delivery of cancelation or nonrenewal must be to:

The Village: Village Manager  
Village of Westmont  
31 W. Quincy Street  
Westmont, IL 60559

All policies obtained and continued hereunder shall be underwritten by a company or companies authorized to do business in Illinois and shall be reasonably satisfactory to the Village.

10.03 Certificates of Insurance. Licensee shall furnish or cause to be furnished to the Village certificates of insurance and blanket additional insurance endorsements evidencing all coverage required by this paragraph. The certificates and endorsements are to be received and approved by the Village before the commencement of any construction or other Licensee Work. Thereafter, such certificates and endorsements are to be delivered to the Village with each annual payment to the Village.

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10.04 Village Insurance. The Village shall be responsible for obtaining and maintaining its own general casualty insurance coverage for the Elevated Tank and any other improvements or property owned by the Village.

## 11 TAXES

11.01 Personal Property Taxes: Licensee shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.

11.02 Taxes Upon the Property. Except as provided below in this Section 11.02, Licensee shall not be responsible for any real estate, special assessments or similar taxes relating to the Premises, or Property except to the extent permitted or required by statute for the value of Licensee's rights. The Village currently enjoys tax-exempt status. Should the tax exemption status of the Village change due to the presence of Licensee, Licensee shall have the right to either (a) have a separate tax parcel covering its installation created, and thereafter pay all personal property and real estate taxes associated with the newly created tax parcel, or (b) pay its pro rata share of such taxes, subject to its right of challenge in Section 11.04 below.

11.03 Indemnification. Further, should the tax exemption status of the Village change due to the presence of Licensee, Licensee shall indemnify and hold harmless the Village for any real estate tax assessed to or paid by Village relating to the Premises, or Property, to the extent which is attributable to Licensee's use.

11.04 Challenges. Licensee shall have the right to contest all taxes, assessments, charges, and impositions, and the Village agrees to join in such contest, if required by law, and to permit Licensee to proceed with the contest in the name of the Village, provided that the expense of the contest is borne by Licensee. If the Village initiates an action to contest taxes or other items, Licensee may join in such action provided that Licensee pays its own expenses of so participating.

11.05 Right to Notice. The Village shall, within ten (10) days of receipt of a notice of any imposition or increase in taxes, assessments or other charges, send a copy of such notice to Licensee. Licensee reserves the right and Village hereby authorizes Licensee to obtain a copy of any tax or assessment bill from the appropriate government offices. Upon request, the Village will execute or join in any application necessary to have originals or copies of tax and assessment bills sent to Licensee and the Village.

## **12 ESTOPPEL CERTIFICATES**

During the Term of this License, either party shall, upon thirty (30) days prior written notice requested by the other, deliver to the requesting party a statement in writing certifying that this License is unmodified and in full force and effect (or if modified, in effect as modified and setting forth the modifications and the dates of the modifications), the dates to which rent and other charges have been paid and stating whether or not, to the knowledge of the party delivering the certificate, the requesting party is in default in performance of any term or agreement contained in this License, and, if so, specifying each default and whether there are any counterclaims.

## **13 SAFETY AND STRUCTURAL WORK ACT**

It is understood and agreed that, with respect to the Antenna Facility and Licensee's conduct on the Premises, including but not limited to all aspects of site health and safety,

Licensee is responsible for the safe performance by Licensee's personnel, representatives, agents, and contractors of their activities in performance of the services related to the Antenna Facility ("Project"). It is expressly agreed that the conduct and obligations of the Village hereunder do not involve any responsibility for the protection and safety of persons on and about the Premises, except to the extent that such persons are employees, contractors, or agents of the Village, nor is the Village to review the adequacy of job safety on the Project. It is further understood and agreed and not in limitation of the foregoing that, except for negligent or intentional conduct by the Village or its employees, agents and volunteers, the Village shall not be in charge of, and/or shall not have control or responsibility over any aspect of the erection, construction or use of any scaffolds, hoists, cranes, stays, ladders, supports or other similar mechanical contrivances or safety devices as defined and interpreted under any structural work act or other statute, regulation or ordinance relating in any way to Project safety.

#### **14 ENVIRONMENTAL SOUNDNESS**

14.01 Hazardous Material Defined. For purposes of this Agreement, "Hazardous Material" includes any hazardous, toxic or dangerous waste, substance or material defined as in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, or so-called "Superfund" or "Superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

14.02 Hazardous Materials Forbidden. No party to this Agreement shall generate or store any Hazardous Materials on or about the Premises or Property, except that the Village may do so in compliance with applicable laws and regulations and with prior notice to Licensee, and the Licensee may use those materials necessary in the ordinary course of its business, including but not limited to batteries, deminimis quantities of cleaning solvents, and natural gas for a temporary generator, provided the natural gas is provided via a fixed line. Any temporary generator installed shall have a residential-level exhaust muffler installed and shall be removed upon termination of this Agreement by Licensee and shall be tested no more than once per week at such times during the day recommended by Licensor.

14.03 Village's Representation. Neither the Village nor, to the best knowledge of the Village, any other person has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof. No portion of the Premises has ever been used by the Village or to the best knowledge of the Village, by another person either as a permanent or temporary dump site or storage site for any Hazardous Material, unless such Hazardous Material was stored in compliance with the law.

#### **15 INDEMNIFICATION**

15.01 Licensee's Indemnity. Licensee shall defend, protect, indemnify, and hold the Village harmless from and against any and all losses, liabilities, damages, injuries (including death), costs, expenses and claims of any and every kind whatsoever including court costs, expert fees, and reasonable attorneys' fees, paid, incurred or suffered by or asserted against Village for, with

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respect to, or as a direct or indirect result of (a) the construction, installation, operation and maintenance of the Antenna Facility, (b) any conduct by Licensee related to or arising under this Agreement all of both (a) and (b) to the extent such loss, injury, death, or damage is caused by the negligence or willful misconduct of Licensee or its respective agents, employees, or contractors, except to the extent such claims or damages are caused by the negligence or willful misconduct of Village and/or its respective agents, employees, or contractors.

15.02 Village Indemnity. The Village shall defend, protect, indemnify, and hold Licensee harmless from and against any and all losses, liabilities, damages, injuries (including death), costs, expenses and claims of any and every kind whatsoever, including without limitation court costs, expert fees, and reasonable attorneys' fees, paid, incurred or suffered by or asserted against Licensee for, with respect to, or as a direct or indirect result of ( 1) the Village or its agents, employees, or contractors related to or arising as a result of Village Operations and (2) any conduct by LicenseeVillage, related to or arising under this Agreement all of both (1) and (2) to the extent such loss, injury, death, or damage is caused by the negligence or willful misconduct of Village or its respective agents, employees, or contractors, except to the extent such claims or damages are caused by the negligence or willful misconduct of Licensee and/or its respective agents, employees, or contractors.

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15.03 Village shall hold Licensee harmless from and indemnify Licensee against and from (a) any damage, loss, expenses or liability resulting from any violation by Village or its tenants, other licensees, agents, invitees or contractors of any federal, state or local environmental statute or other law, and (b) the presence, in, on, under or upon the Property, of any hazardous material (which shall mean any hazardous waste, hazardous substance or toxic substance or material defined, regulated, controlled, limited, or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*) which is not introduced by Licensee or its agents, invitees, or contractors. Licensee shall hold Village harmless from and indemnify Village from and against any damage, loss, expense or liability resulting from any violation by Licensee or its agents, invitees or contractors of any federal, state or local environmental statute or other law, after the Commencement Date hereof, in, on, under or upon the Property.

15.03 Limitation of Indemnification and Remedy. Except for the obligation to indemnify for a third party claim as set forth above, under no circumstances shall either party to this Agreement be entitled to damages, restitution, payment, or indemnification of and for any lost profits or any similar remedy seeking to recover lost income, revenues, salary, benefits, profits, or other consequential damages, in any form or manner.

## 16 MISCELLANEOUS PROVISIONS

16.01 [Intentionally deleted.]

16.02 Cooperation. The Village and Licensee agree to take all steps reasonably necessary or appropriate to carry out the terms of this Agreement to aid and assist the other party, including enacting such resolutions and ordinances and taking such other actions as may be reasonably

necessary or desirable to enable the parties to comply with and give effect to the terms of this Agreement.

16.03 Binding Upon Successors. This Agreement shall inure to the benefit of and be binding upon the successors to Licensee and its respective successors, grantees, licensees and assigns, and upon successor corporate authorities of the Village and each of its respective successor municipalities or entities.

16.04 Assignment. Licensee may not assign, or otherwise transfer all or any part of its interest in the Agreement or in the Premises without the prior written consent of the Village, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Licensee may assign this Agreement to a parent, affiliate, subsidiary or purchaser of all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the Property is located upon written notice to the Village. The Village may assign this Agreement upon written notice to Licensee, subject to the assignee assuming all of the Village's obligations herein.

16.05 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, or portions of this Agreement and, to that end, all provisions, covenants, agreements and portions of this Agreement are declared to be severable.

16.06 Termination. In addition to termination as a result of action or inaction pursuant to other paragraphs of this Agreement, Licensee may terminate this Agreement, without further liability, on thirty (30) days' written notice if: (a) Licensee through no fault or negligence of its own is unable to obtain or loses any governmental approval necessary to construct or use the Antenna Facility, or (b) the Premises, in Licensee's good faith judgment, are or become unacceptable or unusable under Licensee's then current design or engineering specifications for the Antenna Facility or the Permitted Use. Upon termination of this Agreement, Licensee shall remove all antennas, equipment, buildings and structures and restore the Elevated Tank, the Property, and the Premises as provided in Section 4.09 above. Regardless of any other provision of this Agreement, the Village may terminate this Agreement immediately upon notice to Licensee, and the Licensee shall immediately cease all uses of the Premises, if the Village determines and documents that the Antenna Facility presents an immediate and serious danger to the health, safety, or welfare of the public due to structural deficiencies evidenced by a report from a certified structural engineer or due to the operation of the Antenna Facility outside of the FCC regulations currently in place at the time of the violation.

16.07 Survival. Sections 4, 6, 11, 13, 14, 15, and 16 shall survive termination of this Agreement and no event shall reduce or mitigate the obligations of or benefits to any party under these provisions of this Agreement.

16.08 Default. Upon the occurrence of any default under this Agreement, the non-defaulting party shall provide written notice of the default to the defaulting party, and the defaulting party shall thereafter have thirty (30) days to cure any such default, provided that the defaulting party

shall have such extended period as may be required beyond the thirty (30) days, if such an extension is granted by the Village Manager or Licensee (as applicable to the non-defaulting party), which extension shall not be unreasonably refused, if the nature of the cure is such that it reasonably requires more than thirty (30) days and the defaulting party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. In the event the default is not cured or has not commenced to be cured within said thirty (30) day period or extended period as may be required, the non-defaulting party may pursue an appropriate remedy under Section 16.09 of this Agreement.

**16.09 Remedies.** In the event that the use of the Premises is interfered with, in violation of this Agreement then the party whose use is being interfered with shall be entitled to all remedies at law or equity, including the equitable remedy of injunction. The prevailing party in any litigation shall be entitled to recover its reasonable attorneys' fees, court costs, and reasonable costs of litigation, including but not limited to experts' or consultants' fees.

**16.09.01 Equitable Remedies.** The parties agree that such interference shall constitute irreparable harm, that there is no legal remedy which could adequately protect the non-defaulting party's interests in the Premises. Further, the balance of public interest favors the continued use of the Premises, in accordance with the terms of this Agreement, by all parties to this Agreement.

**16.09.02 Legal Remedies.** A non-defaulting party shall have all of remedies at law, with the sole limitation being that no party shall be liable for lost taxes, lost revenues, lost profits, lost income, loss in property value, or any other prospective or other business loss.

**16.10 Interpretation.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois according to the fair meaning of the language and shall not be strictly construed against either party.

**16.11 Complete Agreement.** This Site License Agreement contains all agreements, promises and understandings between the Village and Licensee. Time is of the essence of this License, and of each and every covenant, term, condition and provision hereof.

**16.12 Notices.** All payments, notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, to the following addresses:

The Village:           Village Manager  
                              Village of Westmont  
                              31 W. Quincy  
                              Westmont, IL 60559

If to Licensee:

Nicor Gas Company  
1844 Ferry Road  
Naperville, IL 60563  
Attn: Legal Dept AMI Tower Support

With a copy to:  
Nicor Gas Company  
1844 Ferry Road  
Naperville, IL 60563  
Attn: Office of the Vice President, Business Support

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Notices delivered to these persons and addresses shall be deemed effective on the date of personal delivery, as properly certified, if delivered personally or on the date of delivery reflected in the return receipt if delivered by certified United States Mail, FedEx, or other reputable carrier. If there is any change in designation or address, the party experiencing the change shall notify the other parties of the change. Notice shall be appropriately delivered to the above addresses until such time as any party provides such notice of a change.

16.13 Paragraph Headings. Titles of the several parts, paragraphs, or sections of this agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any provision.

16.14 Choice of Venue. Any dispute between the parties arising under or related to this Agreement shall be determined by a court of proper jurisdiction and venue within the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois; *provided* however that if federal jurisdiction over the issue is exclusive then such dispute shall be determined in the United States District Court for the Northern District of Illinois, Eastern Division. No party shall elect to remove this action from state to federal court or try to transfer this action from any of the courts mentioned herein.

16.15 Title and Quiet Enjoyment. Licensor represents and warrants that (a) it has full right, power, and authority to execute this Agreement, (b) it has obtained all necessary approvals and consents, and has taken all necessary action to enable Licensor to enter into this Agreement and allow Licensee to install and operate the Antenna Facility on the Premises, including without limitation, approvals and consents as may be necessary from other Licensees, licensees and occupants of the Property, (c) that Licensee shall have quiet and peaceable possession of the Premises throughout the Agreement term and (d) to the best of the Village's information and belief, the Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

16.16 Village shall comply, at Village's sole cost and expense, with all tower marking and lighting requirements as well as any other requirements of the Federal Aviation Administration and the Federal Communications Commission to the extent not caused by or resulting from Licensee's Antenna Facility. To the extent such tower marking and/or lighting requirements are caused by or result from Licensee's Antenna Facility, then the Village shall comply with such tower marking

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and/or lighting requirements at the Village's initial expense, and the Licensee shall reimburse the Village for such expenses within thirty (30) days of Licensee's receipt of an invoice from the Village for such work. Village hereby agrees to and does indemnify and hold Licensee harmless from and against any and all fines, penalties, claims, causes of action, suits, costs, and expenses (including, without limitation, attorneys' fees and courts costs) caused by or resulting from Village's failure to comply with such requirements.

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16.17 Village, at Village's sole cost and expense, shall (a) obtain and maintain any and all permits required of the Village for the Property and the operation thereof and shall renew same prior to expiration throughout the term of this License, (b) maintain the Premises facilities in good order and repair (including, without limitation, all necessary replacements).

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16.18 Each Party is permitted to execute this Agreement in multiple counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Each Party is permitted to deliver this License to the other party by means of delivery of one or more counterpart signature pages via facsimile or other electronic means as an attachment in portable document format (".pdf") or other similar format. Any photographic copy, photocopy or similar reproduction of this License, any License delivered by facsimile, in each case with all signatures reproduced on one or more sets of signatures pages, will be considered as if it were manually executed.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the undersigned have executed this Personal Communications System Site License Agreement on the dates noted in each signature block below, the latest of which shall be deemed the Effective Date.

**VILLAGE OF WESTMONT**  
an Illinois municipal corporation

By: \_\_\_\_\_  
Ronald J. Gunther, Mayor

Attest: \_\_\_\_\_  
Virginia Szynski, Village Clerk

Date: \_\_\_\_\_

**LICENSEE**  
Northern Illinois Gas Company, d/b/a  
Nicor Gas Company, an Illinois corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT “B”**  
**DEPICTION OF PROPERTY**



**EXHIBIT “C”**

**DEPICTION OF LICENSED PREMISES  
AND  
SITE PLAN AND ENGINEERING**